IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

WP(C).No. 3427 of 2006(G)

PETITIONER:

M.AJITHAKUMARI, D/O.K.T.KUNHIRAMAN,
UPSA, DHARMADAM BASIC UPPER PRIMARY SCHOOL,
THALASSERY, KANNUR DISTRICT, (`JITHIN',
MADAPEEDIKA, TEMPLE GATE P.O., THALASSERY-2,
KANNUR DISTRICT).

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.PREM DOMINIC

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE ASSISTANT EDUCATIONAL OFFICER,
THALASSERY SOUTH, KANNUR DISTRICT.

3. THE MANAGER, DHARMADAM BASIC UPPER
PRIMARY SCHOOL, THALASSERY, KANNUR DISTRICT.

4. SANMA R.C.P., PREMA NIVAS,
KOTTAYAMPOIL P.O., PATHAYAKUNNU,
KANNUR DISTRICT.

BY ADV. SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL
SRI.V.A.MUHAMMED
SRI.M.V.RAJENDRAN
SRI.K.V.PAVITHRAN
GOVERNMENT PLEADER SRI. T.T. MAHMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/10/2007, ALONG WITH WPC NO. 25115 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.3427 OF 2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: COPY OF THE ORDER DTD 14.7.2004 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: COPY OF THE ORDER DATED 21.11.2005 ISSUED BY R1.

EXT.P3: COPY OF THE ORDER DTD 9./1.2005 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS

EXT.R2(A): GOVERNMENT ORDER NO.188/2000/G.EDN. DATED 8.6.2000.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)Nos.3427 &
25115 OF 2006

Dated this the 19th day of October, 2007

JUDGMENT

These two writ petitions relate to dispute between the petitioners therein as to who should be deployed as a protected teacher from the school on reduction of staff fixation strength, pursuant to staff fixation for the year 2004-2005. The School is a U.P. School having L.P. section also. Pursuant to staff fixation for the year 2004-2005, there was reduction of two posts of U.P. School teachers. One of the teachers was entitled to protection to continue in that school itself and therefore she was retained as a protected teacher in that school itself. The petitioner in W.P. (C) No.3427 of 2006 was the junior- most U.P. School Assistant. The 4th respondent in that writ petition was the Junior-most L.P. School Assistant. Originally, the 4th respondent was retrenched pursuant to reduction of the post. The 4th respondent filed a petition before the Government and the Government passed Ext.P2 order whereby, the 4th respondent was directed to be

retained and the petitioner was directed to be deployed to a Government School. Pursuant to the same, the Assistant Educational Officer passed Ext.P3 order implementing Ext.P2 order. The petitioner in W.P.(c) No.3427/06 is challenging those orders. In that writ petition, there was an interim stay of implementation of the impugned orders. However, the 4th respondent in that writ petition had already rejoined duty before passing of the stay order. However, in view of the pendency of that writ petition, the 4th respondent was being paid only basic pay and no increments and other allowances were given. It is under the said circumstances the 4th respondent in W.P.(c) No.3427/06 had filed W.P.(c) No.25115 of 2006 seeking disbursal of salary and allowances due to him from 15.7.2004. In that writ petition there was an interim order directing the Educational Officer to pay salary for the period from 20.1.2006 onwards to the petitioner. A decision in W.P.(c) No.25115 of 2006 would depend on the decision in W.P.(c) No. 3427 of 2006. Therefore these writ petitions are disposed of by this common judgment.

2. The petitioner in W.P.(c)No.3427 of 2006 raises two

contentions. First is that Exts.P2 and P3 orders have been passed without affording an opportunity of being heard to the petitioner. The 2nd contention is that since the petitioner had all the qualifications to teach in L.P. Section also at the relevant time, for the purpose of retrenchment what has to be looked into is the common seniority among both UPSAs and LPSAs and not separate seniority among UPSAs on the one hand and LPSAs on the other hand. The petitioner relies on Rule 37 of Chapter XIVA and Rule 2 of Chapter II of the Kerala Education Rules. The further contention is that as per Rule 37 of Chapter XIVA, seniority of a teacher in any grade in any unit shall be decided with reference to the length of continuous service in that grade, in that unit provided he is duly qualified for the post. Chapter II contemplates only two grades in schools. One is primary grade and the other is secondary grade. First seven standards in a school is to be collectively known as primary grade which shall be sub-divided into Lower Primary and Upper Primary. Therefore, the word 'grade' in Rule 37 of Chapter XIVA should be taken as primary grade as contemplated in Rule 2 of Chapter II in which event the

seniority should be reckoned among UPSAs and LPSAs in common and the junior-most among UPSAs and LPSAs has to be retrenched on reduction in staff strength is the contention raised. Since the 4th respondent is the junior-most among both UPSAs and LPSAs, it is she who should be retrenched and not the petitioner is the contention raised.

3. This is refuted by the 4th respondent. According to the 4th respondent U.P. Section and L.P. Section of a School are two different independent Sections. Scales of pay of UPSAs and LPSAs are different. Therefore, the grade contemplated in Rule 37 of Chapter XIVA is different from the grade contemplated in Rule 2 of Chapter II. Without separate seniority list among UPSAs and LPSAs, questions of promotion cannot be decided. The promotion to High School Section, if there is a High School Section also in the School, can only be from among UPSAs and not from LPSAs. LPSAs can aspire for promotion only as UPSAs and not as High School Assistants. Therefore necessarily the seniority has to be separate among UPSAs and LPSAs. That being so, when there is a reduction in staff strength in the U.P. Section only U.P. School teacher can

be retrenched and not a L.P. School teacher only. When there is a reduction in staff strength of the L.P. School Section and L.P. School teacher alone can be retrenched is the contention raised.

4. I have considered the rival contentions in detail. Regarding the first contention that the petitioner has not been heard before passing Exts.P2 and P3 orders, I feel that for the purpose of hearing the petitioner, the matter need not be remanded because I am inclined to consider all contentions of the petitioner in this writ petition itself and the matter need not be prolonged further by remanding the matter to the Government for fresh consideration after hearing the petitioner.

5. Exts.P2 order proceeds on the basis that when a reduction in staff strength occurs in a U.P. Section of a School, the junior-most U.P. School Assistant has to be retrenched and not a L.P. School Assistant on the basis of a common seniority list among UPSAs and LPSAs depending on their comparative length of service. To me that appears to be the correct legal position. Admittedly, U.P. Section and L.P. Section are

separate. Scale of pay of U.P. School Assistant and L.P. School Assistant are different. U.P. School Assistant is a promotion post for L.P. School Assistant. I am of opinion that the word 'grade' referred to in Rule 37 of Chapter XIVA cannot be the primary grade mentioned in Rule 2 of Chapter II. If that interpretation is accepted that would militate against commonsense. In fact, in this connection I may also refer to a decision of the Supreme Court in **Harinandan Sharan Bhatnagar Vs. S.N. Dikshit and another [AIR 1970 SC 40]**, wherein it has been held that all officials working in the same scale of pay in a department, although holding posts with different designations, shall be deemed to be holding posts in the same grade, because their rank in the same department will be the same and equal to one another. As far as U.P. School Assistant and L.P. School Assistant are concerned, their scales of pay are different. For all purposes U.P. Section and L.P. Section are treated separately. While fixing all staff strength, the staff strength is fixed separately for U.P. Section and L.P. Section. Therefore, when reduction of staff strength occurs in U.P. School, the junior-most U.P.

School Assistant alone can be retrenched. Otherwise, an anomalous situation would occur. For example, if there is reduction of staff strength in the L.P. Section and if there is a U.P. School Assistant who is appointed after the appointment of the junior-most L.P. School Assistant then the U.P. School Assistant would have to be retrenched which does not stand to reason. Further a common seniority list among U.P. School Assistant and L.P. School Assistant is beyond comprehension. Therefore, I am of opinion that when reduction of staff strength occurs in U.P. Section, the junior-most U.P. School Assistant has to be retrenched and not the junior most among U.P. School Assistants and L.P. School Assistants put together. In that view, it is clear that the petitioner who is the junior-most U.P. School Assistant herein should be retrenched and not the 4th respondent who is the junior most L.P. School Assistant.

In the above circumstances, there is no merit in W.P.(C) No.3427/06 and accordingly the same is dismissed.

In view of dismissal of W.P.(c) No.3427/06, the petitioner in W.P.(c)No.25115/06 becomes eligible for all service benefits

as if she had continued in service validly and monetary benefits arising there from shall be disbursed to her accordingly. If increments and other allowances admissible to the petitioner in W.P.(c) No.25115/06 has not been granted, the same shall also be disbursed to her. These shall be done within a period of one month from the date of receipt of a copy of this judgment.

S. SIRI JAGAN, JUDGE

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